IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

CRIMINAL APPEALLTE JURISDICTION.

CRIMINAL APPEAL NO. 340 OF 1998

Sandeep Laxminarayan Acharya.... ....
Appellant.
(Orig.Accd.)
V/s

The State of Maharashtra .... Respondents.

Mr.Shirish Gupte with Ms.Sharmila Kaushik, Adv. for the appellant.

Mr.A. M. Shringarpure, APP for the State.

CORAM: V.G. PALSHIKAR
AND
R.C. CHAVAN, JJ.

12th August, 2005.

ORAL JUDGMENT: (Per Palshikar, J.)

Being aggrieved by the judgment and order of conviction and sentence passed by the learned Additional Sessions Judge, Greater Bombay, in Sessions Case No.487 of 1991 on 17.2.1998 the appellant-accused has preferred this appeal on the grounds mentioned in the memo of appeal as also verbally canvassed before us.

2. With the assistance of the learned counsel for the appellant as also the learned Public Prosecutor we have scrutinized the entire evidence and reappreciated the same.

3. The prosecution case stated briefly is that the accused Sandeep and the victim one Mr.Patil were serving in a shipping company and were at the

material time in service of that company on a ship called “m.v. Kapetan-K”. P.W.1-Dilip Pannangadan was the master of the ship thus in command of the ship. The victim Patil was the second mate, the accused was a newly recruited cadet. In the night of 9th and 10th June 1990 both the accused and the victim were serving on the ship and in the morning the accused was liable to report before the Chief Officer at 7.00 a.m. Around 2.00 in the night P.W.1-Dilip the captain of the ship heard noises of scuffle from the deck above his cabin and therefore called the second officer on night duty on the navigation bridge deck. Since there was no response to his phone calls he came around the cabin and started going towards the navigation bridge when he heard the whizzing sound. He therefore went to the place from where the sound emanated. There he found the second officer deceased Patil lying on the deck with blood injuries, next to him he also saw the accused standing. The witness noticed the injury to the right hand of the accused and blood stained clothes. Thereafter emergency measures were under taken to give treatment to the victim who ultimately succumbed to the injuries. The accused was handed over to the police and ultimately transmitted to India for being tried for the offence of causing death of Patil. The prosecution has examined nine witnesses to prove its case and the learned trial Judge on the basis of this evidence came to the conclusion that the accused was guilty of murder and therefore proceeded to convict him under section 302 of Indian Penal Code.

4. This order of conviction is assailed by the learned counsel appearing on behalf of the appellant-accused on various grounds. According to the

learned counsel the entire evidence is circumstantial and therefore the prosecution has failed to prove beyond reasonable doubt all the circumstances in the present case. As observed above with the assistance of the learned counsel and the learned Public Prosecutor we have scrutinized the evidence. It is difficult to accept the suggestion of the learned counsel that no incident occurred or that the prosecution has not prove anything. From the deposition of P.W.1-Dilip the captain of the ship and P.W.7-Giles Crouch the security officer it is obvious that the incident of assault did occur. We will presently note the circumstances which prove that there was a scuffle.

5. At this stage it is liable to be noted that the learned trial Judge heavily relied upon the so called extra judicial confession of the accused in relation to the incident to the security officer who is examined as P.W.7.

6. It will be seen from the evidence on record that the prosecution has proved that there was a scuffle between the accused and the deceased, that though the second officer deceased Patil was on duty he was not wearing a shirt, he had knife with him, he had called the accused to the deck, though the accused was not supposed to be there and there has been a scuffle between the two and the scuffle was obviously so violent that the captain who was sleeping in the cabin below was awakened from sleep around 2.00 a.m. in the night. It is also proved that at the time when the scuffle occurred it was pitch-dark and the sea was in turbulence. It has come in the evidence of P.W.1-Dilip that thereafter the accused was sedated and kept under lock and key with guard inside and outside. Inquiry by the captain revealed that

the accused was called to the deck by the deceased.

7. There is also evidence on record which cannot be disputed is the fact that the accused himself was injured. P.W.1-Dilip has proved on record the logbook extract kept by him. In this logbook extract it is mentioned that the accused told the witness P.W.1-Dilip who was captain that the accused was called to the deck by the victim Mr.S.S. Patil and there was fight between the second officer and the accused. Immediately medical aid was given to the accused and he was detained. It will thus be seen that the prosecution has proved the factum of scuffle between the accused and the victim. The question which arises for our adjudication therefore is, was this injury caused with the intention of causing death or it was a result of serious scuffle between the two. The second question which according to Shri Gupte falls for consideration is whether in the ;circumstances proved it is necessary to invoke the provisions of section 100 of the Indian Penal Code pertaining to self defence of a person.

8. According to us the prosecution has fully established by record and the evidence of nine witnesses that the incident occurred late in the night of 9th and 10th June, that it occurred on the high seas, that there was scuffle between the accused and the victim, serious injury was caused to the palm of the accused and multiple injuries were caused to the victim. All this is proved by evidence of P.W.1 and other attending proved circumstances. It will be seen from the evidence of P.w.1-Dilip that the injury sustained by the accused in the scuffle was severe even though not serious. We would like to note in verbatim what the Captain-P.W.1 has to say about it:

" I had also explained to the doctor that the injuries on the person of the accused was continuously bleeding. That the fingers of his injured hand are becoming blue. On the instruction of the doctor we had patch up the said injury and had elevated injured hand of the accused. After seeing the entire condition I decided to proceed to Halifax, Canada."

Captain has also deposed that the temperature around vegetable room where the accused was kept at that time was 4 or 5 degrees celicius. Inspite of such cold weather the deep cut on the hand of the accused was bleeding. It shows the gravity of the injury in the circumstances then prevailing. It was in these circumstances that the accused took away the knife from the victim and defended himself from any further attack by the victim. There is nothing on record to show that the knife wielded by the deceased was the only weapon with the deceased. In the night with grossly inadequate light it was extremely difficult for the accused to know the exact move the assailant, the victim would do. He has therefore inflicted repeated blows to ward off the onslaught of the attack of the second officer. It was in this fight that several injuries were sustained by the victim as a result of which he met with his death.

9. Then comes the evidence of P.W.7-Giles Crouch who was at the relevant time security guard with the coastal guards in Canada where the accused was kept in detention. This witness has deposed that he asked the accused as to why he was being guarded on which the accused told the witness P.W.7 that in the night of 10th June, he came on the bridge and there

was knife fight between the accused and the victim. The accused also told the witness that he being junior most cadet was often teased by the victim and other officers. According to P.W.7- Giles Crouch when the accused went on the bridge the second mate (second officer) was intoxicated. When the victim attacked the accused, the accused held the knife with the result that it had deep cut injury on his right palm. The witness was also told by the accused that there was no other alternate but to stab the victim. The learned trial Judge has accepted this version of witness for coming to the conclusion that there was fight between the accused and the deceased. We also have no hesitation in accepting this evidence which goes to show that there was a scuffle and according to the witness the accused told him that there was no alternate but to stab the victim. This was obviously to save life of the accused himself. It is pertinent to note that except for this testimony of the witness P.W.7- Giles Crouch there is nothing on record which connects the accused to the fight. All that has been seen by P.W.1-Dilip-Captain is the victim lying in injured condition, the accused also there in injured condition with deep cut on his palm. There is no recovery of the knife involved, there is no means to know what was the knife, there is no other recovery to connect the accused with the incident. In our opinion, there is no error in accepting this evidence of P.Ws.1 and 7 for coming to the conclusion that there was a sudden fight between the accused and the victim. Accepting this evidence the following consequences can be derived: (i) that the second mate was on duty in the night when he was on the bridge; (ii) he was supposed to be correctly dressed in proper uniform; (iii) he was wearing only

his pants and no shirt; (iv) he had called the accused to the bridge; (v) the victim and the other officers were teasing the accused. The accused was young boy of 18 years. Why and how he was teased need not be gone into. The fact that the victim assaulted the accused with knife stands established only because evidence of P.W.7 is accepted. If that evidence is to be accepted it will be accepted as a whole. So accepted it becomes obvious that there was a fight between the accused and the victim and the victim having suffered serious injury was left with no alternate but to prevent the assault on his person which might have resulted in death by retaliating to prevent his own death. We have therefore no hesitation in concluding that there was fight between the accused and the victim and it was during this fight that the accused in self defence of his person snatched the knife from the hands of the victim and stabbed the victim. He was required to stab repeatedly to remove the possibility of fresh attack by the victim, as a result of such exercise to self defence of person that the accused caused death of the victim.

10. From these findings we have to ascertain whether the accused is within the definition of self defence of person as made in the Indian Penal Code or whether he has exceeded that right. If he is within the limit permissible under section 100 there is no offence committed. If he has exceeded that right he might have committed offence defined under section 304 of Indian Penal Code. That there was no intention to commit murder is obvious. That there was fight between the accused and the victim is proved. That there was a serious injury on palm of the accused is also proved. The

seriousness of the injury is also proved.

11. The provisions of section 100 stipulate that right of private defence of body can extend to causing of death and spells out the circumstances which can be caused. The relevant provision for the purposes of this appeal reads as under :

> "100. **When the right of private defence of the body extends to causing death.-** The right of private defence of body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely:-
>
> First.- Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;"

The right of private defence of body therefore extends to voluntarily causing death or any other harm to the assailant where there is reasonable cause to apprehend that death will otherwise be the consequence of such assault on the defender. In our opinion, the present circumstances in the case answer the description required by section 100 for extending right to private defence to killing in the present case. It is established by the evidence of P.w.7 and P.W.1 that there was serious injury to the hand of the accused, that the accused snatched the knife from the hands of the victim and stabbed him. The fact that the victim was assaulting is also stated by P.W.7. It was a night as is established on record. Having sustained such deep injury on his hand

the accused did reasonably apprehend that if he does not stop the assailant the assailant would kill him and at that time in that atmosphere of lack of light the only thing which the accused could do to save himself was to keep repeatedly jabbing the knife so that the victim does not come near to him. This jabbing did cause several injuries to the victim. But because of darkness the extent of injuries inflicted was not known to the accused. In such circumstances it cannot be said that the accused in any manner exceeded his right of self defence. In our opinion, the learned trial Judge committed an error in not applying the provisions of section 100 in the circumstances of this case. He should have seen that it was clearly case of right of defence of self body of the accused. The only way the accused could save himself from fatal assault was to assault in retaliation the assailant. As a result of that fight which ensued in self defence of the body of the accused that the victim met his death. In the ;circumstances that death cannot be called homicidal death. It is a death which occurred in a fight in which the accused was exercising his right of defence of his person. In our opinion, therefore it is a fit case where benefit of protection of section 100 is liable to be given to the accused and so considered the conviction and sentence under section 302 becomes illegal. In the result therefore appeal succeeds and is allowed. The conviction and sentence under section 302 of Indian Penal Code is set aside. The accused is acquitted. The accused is already on bail his bail bonds stand canceled.

12. During the pendency of the trial passport of the appellant was seized and deposited in the Sessions Court. In view of the order of acquittal passed

by us the accused is entitled to return of the passport. He is therefore directed to make appropriate application before the learned Sessions Judge. Appeal accordingly stands disposed of.